

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA

Plaintiff

vs

CRIMINAL 05-0047CCC

1) JOSE R. LUGO-GUERRERO
2) OSCAR SOSA-DELGADO
3) **ALEXANDER GUZMAN-DEL-VALLE**

Defendants

O R D E R

The Court has before it the Objections to Presentence Report and Sentencing Memorandum filed by defendant Alexander Guzmán-Del-Valle on September 13, 2005 (**docket entry 77**), which stands unopposed. The sentencing memorandum is NOTED. As to the objections, defendant challenges the structure of the Pre-Sentence Report (PSR) as it allegedly treats the Sentencing Guidelines as the presumptively correct sentence, and contests the two-level upward adjustment awarded to him under advisory Guideline §3C1.2 for obstruction of justice.

As to the overall challenge to the contents of the PSR, defendant is advised that the Court will consider all the factors outlined in 18 U.S.C. §3553, and not merely the advisory sentencing guidelines, when imposing sentence. As to the objection to the upward adjustment under Guideline §3C1.2, the Court notes that the U.S. Probation Officer applied the same after concluding that “defendant recklessly created a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement officer.” Pre-Sentence Report (docket entry 78), at p. 5, ¶10. The specific factual basis for the adjustment was obtained from unidentified government’s witnesses who described that “the driver of the car was swerving through traffic, making erratic lane changes without using turn signals and even drove over two lane dividers causing a flat tire in the process.” PSR, at p. 4, ¶6. The driver of the

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car was defendant himself. Defendant claims, however, that he was forced to drive recklessly by his co-defendants, both of which were armed, and that he had no choice but to obey their commands.

While the adjustment is essentially based on reckless driving while fleeing from the authorities and it is undisputed that defendant was the driver of the getaway car, the government, who has the burden of proving the facts central to upward adjustments in offense levels under Sentencing Guidelines, has not opposed the motion and did not negotiate such an adjustment in the Plea Agreement. Accordingly, the Court will not apply the adjustment and defendant's objection is SUSTAINED.

SO ORDERED.

At San Juan, Puerto Rico, on September 22, 2005.

S/CARMEN CONSUELO CEREZO
United States District Judge